

In the Drawings:

New Figures 2 and 3 are re-submitted for reconsideration. As demonstrated below, Figures 2-3 do not introduce new matter

REMARKS

The applicants have carefully considered the Office action dated December 8, 2005 and the references it cites. By way of this response, claim 1 has been amended. In view of the following, it is respectfully submitted that all pending claims are in condition for allowance and favorable reconsideration is respectfully requested.

Restriction Requirement

Applicants continue to traverse the restriction requirement. Accordingly, applicants have concurrently filed a petition seeking reversal of the same. Applicants respectfully request the Office to examine all of claims 1-23 together in this application.

The Drawings Objections

The Office action objects to the drawings on several grounds. The Office action asserts that the drawings do not show "the crimped portion, 2 openings with respective dust covers; and 3 magnetic pins." A portion of the crimped portion 13, one of the pins 15 and one of the openings is shown in original Figure 1. There is no requirement to show two openings and three pins, since the structures would be duplicative of those already shown in Figure 1. Nor is there any requirement to show the entire length of the crimped portion, as a person of ordinary skill in the art can see that structure and its location in Fig. 1, and can fully understand its structure and location from the accompanying written description.

Nevertheless, these features are also shown in Figures 2 and 3. In particular, the crimped portion 13 can be seen in Figures 1 and 2, the openings 17 with respective dust covers 7 can be seen in Figures 1 and 2, and the magnetic pins 15 can be seen in Figures 1, 2 and 3.

The Office action did not enter Figures 2 and 3 because the Office action asserts that Figures 2 and 3 “are of more detail than can be supported by the application as originally filed with regard to the size and location of items 15, 17, 22, 7 and 13.” The applicants respectfully traverse this objection and respectfully submit Figures 2 and 3 do not introduce new matter. Accordingly, Figures 2 and 3 are being re-submitted herewith for consideration.

In terms of the size and location objection, the applicants note that the Examiner is incorrectly applying an overly strict standard in objecting to the precise size and shape of elements added to the drawings as being unsupported by the specification. Clearly, an element added to a mechanical drawing must have *some* size and *some* shape, or it could not be illustrated. Therefore, objecting to the size and shape of an element as adding new matter effectively eliminates the possibility of adding elements to drawings based on the specification unless the exact size and shape of such an element are specifically recited in the specification (a situation which would almost never occur).

Such a result would, however, be inconsistent with the MPEP and the well established practice of the USPTO. For example, it has long been

established that an applicant is entitled to add elements described in the original specification, but not shown in the original drawings, to the drawings of the application without adding new matter. “Stated another way, information contained ***in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter.***” (MPEP § 2163.06)(emphasis added).

Contrary to this practice, a rule that would require any size and shape of an illustrated element added to the drawings to be expressly described in the written description would virtually eliminate the possibility of adding material described in the specification to the drawings. Specifically, since the written specification will almost never provide the exact dimensions (e.g., the exact size and shape) of a structure, it would be virtually impossible to add any element to any drawing if only those elements whose precise size and shape were described in the specification could be added. Of course, such a result is absurd and inconsistent with decades of PTO practice.

The reason there is no requirement for the size and shape of elements added to drawings to be precisely stated in the written description is that drawings in a patent are ***not*** intended to provide precise size and shape information. Indeed, it has long been established that “ordinarily, drawings which accompany an application for a patent are merely illustrative of the principles embodied in the alleged invention claimed therein and do not define the precise proportions of elements relied upon to endow the claims with patentability. ***Patent Office drawings are not normally drawn to scale.***” *In re Olson*, 212 F.2d 590, 101 U.S.P.Q. 401, 402, 403 (C.C.P.A. 1954)

(emphasis added). Requiring the newly added elements to have sizes and shapes corresponding to exact dimensions recited in the specification to avoid a new matter rejection effectively requires a far stricter standard for patent drawings than has been established as the law of the land for at least 50 years.

In view of the foregoing, it is respectfully submitted that any objection to the size and shape of added elements as not being precisely recited in the written description goes far beyond the well established principles for new matter rejections and is, thus, improper.

Turning to the exact structures themselves, the “size and location” of the elements detailed in Figures 2 and 3 are consistent with those same elements shown in originally filed Figure 1 and with the description of those elements in the specification. For example, Figure 1 and Paragraph [0012] clearly show and describe that item 7, the dust cover, covers the ejection opening. Paragraph [0011] further details that there may be a “second dust cover for right-handed marksmen is arranged on the opposite side” of the housing 1 and that the second cover “is a mirror image of the first dust cover 7” shown in Figure 1. Thus, the second opening and second dust cover are fully supported by Figure 1 and Paragraph [0011].

Element 13 is the crimped piece. This element is clearly shown in Figure 1. The specification provides additional support for the size and location of the crimped piece 13. The specification states, “In the illustrated example, a continuous, multiply crimped, and highly ferromagnetic steel sheet metal strip 13 is inserted into the side of the dust cover 7 that faces the housing. The strip 13 is oriented parallel to the upper edge 9 of the dust cover

7. Because of its crimping, the strip either emerges from the dust cover 7 or lies close to the surface of the dust cover 7 at a minimum of three points. One of these points is located approximately in the middle of the upper edge 9. Another of these points is near the front edge of the dust cover 7.” See Paragraph [0013]. Figs 2 and 3 are completely consistent with this description and with the structures shown in Figure 1.

Figure 1 shows a magnetic pin 15. Figure 2 shows the same element, but in three places as recited in the specification and claims. The specification states in Paragraph [0013] that strip 13 “either emerges from the dust cover 7 or lies close to the surface of the dust cover 7 at a minimum of three points.” Paragraph [0013] also specifies that “One of these points is located approximately in the middle of the upper edge 9. Another of these points is near the front edge of the dust cover 7.” Paragraph [0014] states that “[p]roximate to each point of the strip 13 that emerges or lies close to the surface of the dust cover, a magnetic pin 15 is inserted into the wall of the housing 1 above the ejection opening 17... Magnetic pins 15 and strip 13 are constructed and arranged so that they lie flat against each other when the dust cover 7 is closed.” Thus, the location, number, size, and position of the pins 15 of Figures 2 and 3 are fully supported in the originally filed application.

. The second opening 22 is clearly described in paragraph [0021] as being located under the dust flap. The dimensions are immaterial although clearly a person of ordinary skill in the art would appreciate that the second opening 22 should be positioned to avoid interference with the ejection opening; as is shown in Figure 3.

In view of the foregoing, it is respectfully submitted that Figures 2 and 3 are not of more detail than can be supported by the application as originally filed. That is, no new matter has been introduced. Consequently, the applicants respectfully request the Examiner to enter Figures 2 and 3. If the Examiner remains unconvinced and has constructive suggestions on further changes to the drawings, he is expressly requested to telephone the undersigned or provide a sketch in the next PTO response.

The Amendments to the Specification

Paragraph [0004] was amended to correct translation errors. No new matter has been introduced.

The 35 U.S.C. §§ 102 and 103 Rejections

Claims 1-2, 18 and 21 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kamen et al. (U.S. Patent No. 5,135,012). Claims 1-2, 18, and 20-21 are rejected under 35 U.S.C. § 102(b) as being anticipated by O'Reilly (U.S. Patent 3,807,537). And claims 1, and 17-18 are rejected under 35 U.S.C. § 102(b) as being anticipated by Needham et al. (U.S. Patent 4,480,407).

Claims 1-6, 8-16, 18 and 20-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson et al. (U.S. Patent No. 2,659,114) in view of either Meyer et al. (U.S. Patent No. 5,950,450), Reichert et al. (U.S. Patent No. 4,448,464) or Reed et al. (U.S. Patent No. 4,326,383). Claims 1-3, 5-7, 10-13, 15, 18 and 21 were rejected under 35 U.S.C. § 103(a) as being

unpatentable over Mark et al. (U.S. Patent RE23,920) in view of either Meyer, Reichert or Reed.

At the outset, applicants respectfully submit that the rejections are all based on error in that they improperly ignore the term “firearm” in each of claims 1-21. All of those claims are directed to firearms. This was made clear by the prior examiner in the first Office action and in applicant’s response to that first Office action. It is improper for the Examiner to ignore the prior history of this case and to ignore the clear limitations of the claims. All of claims 1-21 are directed toward firearms.

Although it is not necessary, applicants have further clarified claim 1 to recite a firearm housing. Thus, claim 1 now recites a **firearm** comprising, among other things, a **firearm housing** defining an opening, a dust cover to cover the opening in the housing, and a magnetic lock to secure the dust cover in the closed position. None of Kamen, O’Reilly, Needham, Anderson, Meyer, Reichert, Reed or Mark, nor any combination thereof teach or suggest such a firearm. Indeed, none of these references are directed toward a firearm at all. Accordingly, irrespective of how one combines these references, without hindsight reference to applicants’ disclosure, one would never arrive at a firearm as recited in any of claims 1-21. Nor would one arrive at the method of claims 22 and 23.

More specifically, Kamen describes a compact case for cosmetics. O’Reilly describes an attaché case. Needham describes a door for pets. And all of Anderson, Meyer, Reichert, Reed and Mark are directed toward refrigeration devices. Since none of these references describe a firearm or a

firearm housing, none of these references anticipate the recitations of claims 1-21. Further, if one combines a make-up case with an attaché case and/or a refrigerator, one does not end up with a firearm as recited in claim 1.

In short, the cited references are not analogous art to the firearm recited in claims 1-21 or the methods recited in claims 22 and 23. "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." In re Clay, 966 F.2d 656, 659 (Fed. Cir. 1992). Here, no reasonable inventor concerned with securing a dust cover to a firearm in a manner that would allow for the dust cover to open and close would ever have thought to look to the cosmetics industry, the luggage industry, the pets industry, or the refrigeration industry for a potential solution to the problem. Just as persons of ordinary skill in the art of designing firearms would not look to the furniture industry for guidance on building a firearm (See paragraph 6 of the Rule 132 Declaration previously submitted), a person of ordinary skill in the firearm art simply would not consult the cosmetics, luggage, pets or refrigeration arts for teachings on how to construct a firearm. As such, an inventor faced with the problem of securing a dust cover to a firearm, would never have examined how cosmetic compacts, brief cases, pet doors, or refrigerators close as a part of the search for a solution to his problem. Therefore, without reference to the teaching of the applicants' own specification, one would never consider Kamen, O'Reilly, Needham, Anderson, Meyer, Reichert, Reed or Mark in trying to create a latch for the

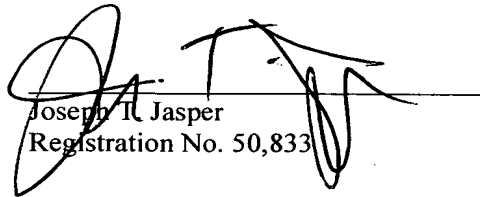
dust cover of a firearm. In short, each of the Kamen, O'Reilly, Needham, Anderson, Meyer, Reichert, Reed and Mark references is non-analogous art. Therefore, the rejections based on any one or more of Kamen, O'Reilly, Needham, Anderson, Meyer, Reichert, Reed, Mark and/or any combination thereof are in error and must be withdrawn.

In view of the foregoing, it is respectfully submitted that all pending claims are in condition for allowance. If the Examiner is of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is invited to contact the undersigned at the number identified below.

Respectfully submitted,

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